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2:11-cv-00043-APG-GWF

ORDER

Defendants.

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1 Civ. P. 60(b)(1). Plaintiff opposes the request to file a single motion for partial summary
judgment because the deadline for dispositive motions has passed.

2 The court construes Defendant's Motion (Dkt. #116) as a request to file a motion for
3 partial summary judgment past the deadline for dispositive motions. The court will not
4 reconsider the previous denial of the three motions for partial summary judgment. However,
5 Defendant may file its proposed consolidated motion for partial summary judgment, as the
6 request was filed in a timely manner after the court's denial without prejudice of the previous
7 motions.

8 **MOTION FOR RELIEF FROM ORDER DENYING BIFURCATION OF TRIAL**

9 **(Dkt. #127)**

10 On February 23, 2012, the court denied (Dkt. #87) a Motion to Bifurcate (Dkt. #84). On
11 February 19, 2013, Defendant filed a Motion for Relief from Order (Dkt. #127) pursuant to Rule
12 60(b)(6), requesting that the court reconsider its previous denial of the Motion to Bifurcate based
13 on expert testimony taken on February 21, 2012. Federal Rule of Civil Procedure 60(b)(6)
14 provides that a court may relieve a party from a final order for any reason that justifies relief.
15 FED. R. CIV. P. 60(b).

16 Plaintiff argues that Rule 60(b) is inapplicable to interlocutory orders. An order denying
17 a request to bifurcate the trial is interlocutory, and may be revised at any time before the entry of
18 final judgment. *See* FED. R. CIV. P. 54(b). While Rule 60(b) applies only to final judgments and
19 orders, a district court "possesses the inherent procedural power to reconsider, rescind, or modify
20 an interlocutory order for cause seen by it to be sufficient." *City of Los Angeles, Harbor Div. v.*
21 *Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (emphasis and citations omitted).
22 The District of Nevada uses the standard for a motion to alter or amend judgment under Rule
23 59(e) when a party seeks reconsideration of an interlocutory order. *Antonetti v. Skolnik*, No,
24 3:10-cv-00158-LRH-WGC, 2013 WL 593407, at *1 (D. Nev. Feb. 13, 2013) (citations omitted).
25 Accordingly, reconsideration is appropriate "if (1) the district court is presented with newly
26 discovered evidence, (2) the district court committed clear error or made an initial decision that

was manifestly unjust, or (3) there is an intervening change in controlling law.” *Sec. Exch. Comm’n v. Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1100 (9th Cir. 2010) (citations omitted). “A motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court already has ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev. 2005).

Defendant has not presented any credible reason for the court to reconsider the prior order. The deposition testimony obtained a year before Defendant filed the Motion for Relief from Order is insufficient to justify reconsideration. Defendant quotes Jeffrey Stempel’s deposition testimony and claims that the testimony “clearly states that Plaintiff intends to pursue a claim that requires a pre-requisite before an outcome can be determined.” (Dkt. #127 at 4:28-5:2.) Stempel’s testimony actually states that valuation of the injuries is not required for the jury to determine whether Defendant engaged in unfair practices. Even if Mr. Stempel testified to an opinion that the trial must be bifurcated, which he does not, Defendant has provided no compelling reason that the court must reverse its prior decision concluding that bifurcation is not required under Nevada law or Rule 42(b). For that reason, the Motion for Relief from Order is denied.

CONCLUSION

IT IS HEREBY ORDERED that the Motion for Relief from Order (Dkt. #116) is **GRANTED**. Defendant may file its consolidated motion for partial summary judgment on or before August 13, 2013. The response and reply shall be filed in accordance with Local Rules.

IT IS FURTHER ORDERED that the Motion for Relief from Order (Dkt. #127) is **DENIED**.

DATED this 6th day of August, 2013.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE